



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Doug Sutherland - Commissioner of Public Lands

Bonnie Bunning, Executive Director

REPORT OF AUCTION OF STATE LANDS

Application No. 02-077905

Name of Sale: **Hatton Water Certificate**, Adams County

PRINT NAME OF SUCCESSFUL BIDDER(S) (This will be the name(s) to appear on the deed unless otherwise instructed in writing)

ADDRESS OF PURCHASER:

PHONE:

FAX :

DESCRIPTION OF PROPERTY: See attached Memorandum of Auction.

MINIMUM ACCEPTABLE BID: \$250 per acre-foot

SUCCESSFUL BID:

\$ _____

BID DEPOSIT:

\$ _____

BALANCE REMAINING (plus transaction costs):

\$ _____

TRANSACTION COSTS:

\$ _____

TERMS OF SALE ARE SET FORTH IN THIS REPORT OF AUCTION AND THE ATTACHED MEMORANDUM OF AUCTION.

DISCLAIMER

STATE DOES NOT REPRESENT AND SPECIFICALLY DISCLAIMS ANY WARRANTIES REGARDING THE QUALITY OR QUANTITY OF ANY WATER TRANSFERRED UNDER THIS AGREEMENT OR ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. PURCHASER SHALL NOT RELY ON ANY REPRESENTATION BY STATE INCLUDING THOSE RELATING TO VALUATION OR PRE-BID DOCUMENTATION. PURCHASER HAS HAD AN OPPORTUNITY TO SEEK LEGAL COUNSEL ON THE LEGAL EFFECT OF THIS SALE.

WITNESS this ____ day of _____, 20__.

I hereby agree to the terms set forth in this report and attached memorandum of auction.

PURCHASER/Agent

PURCHASER/Agent

I hereby certify that the above and foregoing is a full, true and correct report of the auction of lands described above, containing description, price and other information, held on the ____ day of _____, _____, beginning at ____ a.m. Purchaser's bid has been accepted as the successful bid subject to confirmation as provided by RCW 79.11.175.

AUCTIONEER

Name

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, COMMISSIONER OF PUBLIC LANDS

**MEMORANDUM OF AUCTION
OF WATER CERTIFICATE**

THIS AGREEMENT is made as of the { **auction date** } _____ day of _____, 20____, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources ("State") and _____ {a (_____) corporation **OR** a (_____) partnership **OR** husband and wife **OR** an individual}, ("Purchaser").

WHEREAS, State is the holder of a water certificate issued by the Department of Ecology under Certificate No. G3-23389C (hereafter "Certificate"). The certificate currently authorizes the diversion and use of water in Adams County, Washington; and

WHEREAS, Purchaser was the successful bidder to purchase the rights under the Certificate at the auction held this date;

NOW, THEREFORE, in exchange for the mutual promises and covenants herein contained, and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged by Purchaser and State, it is agreed as follows:

SECTION 1 CERTIFICATE

1.1 Rights Acquired. State has sold and will transfer to Purchaser, and Purchaser shall accept from State, subject to the terms of this Agreement, the rights set forth below held under the Certificate. A copy of the Certificate is attached as Exhibit A. This is a transfer of water rights only. Any improvements associated with the Certificated water right, including such improvements for a diversion system or delivery system, installed by State at the current point of diversion through point of use are NOT included in this sale.

The annual quantity is 1370 acre feet per year, from February 1 to November 30.
The instantaneous flow is a maximum of 1500 gallons per minute.

SECTION 2 PAYMENT

2.1 Purchase Price. The purchaser price ("Purchase Price") is the bid amount of two hundred fifty U.S. Dollars (\$250.00) per each acre-foot of all water approved for transfer to the Purchaser by the Washington State Department of Ecology.

(a) Bid Deposit. Purchaser has made a bid deposit or furnished a bid bond guarantee in the amount of twenty thousand U.S. Dollars (\$20,000.00). If a bid bond guarantee

was substituted for a bid deposit, Purchaser shall pay the cash equivalent of the bid guarantee amount to the State within seven (7) days of the auction date. In the event Purchaser fails, without legal excuse, to complete the purchase of the Certificate, the deposit made by Purchaser shall be forfeited to State in an amount not to exceed five percent (5%) of the Purchase Price as the sole and exclusive remedy available to State for such failure.

Buyers Initial: _____ Date: _____

Balance. The balance of the Purchase Price and all costs, assessments, prorations, charges or fees due under this Agreement shall be paid in cash within seven (7) days after preliminary approval for the transfer application is given by the Department of Ecology. If the final superseding transfer is not issued through no fault of the Purchaser, the Purchase Price shall be refunded in its entirety to the Purchaser. If Purchaser fails to take all steps necessary to receive the final superseding transfer, then only the Balance shall be refunded.

2.2. No Interest. The bid deposit and balance paid shall be held by the State Treasurer without interest until Closing.

SECTION 3 CLOSING

3.1 Date. The "Closing Date," "Closing," or "Date of Closing," as those terms are used herein, shall mean the date upon which all monies are paid and all documents are filed/recorded and/or approved by the applicable entity approving the transfer to complete the sale. Closing shall be as soon as practical for State to issue a quitclaim deed from the Governor's Office upon confirmation of the sale and confirmation that the Purchase Price has been paid to the State Treasury and all terms have been met.

3.2 Place. Closing shall be carried out at the Olympia office of the Department of Natural Resources. Purchaser acknowledges that State is acting as an interested party in preparing documentation for and closing this sale; State is not acting as an escrow. Purchaser should consult an attorney regarding the legal effects of this transaction.

SECTION 4 TRANSFER, CONVEYANCE AND POSSESSION

4.1 Transfer. Within 15 days of Purchaser executing this Memorandum of Auction, Purchaser shall apply to the applicable entity with jurisdiction to approve the transfer of the water right acquired. Purchaser shall be solely responsible for any and all costs, including consultant fees, filing fees, regulatory fees, or other administrative expenses required to effect the transfer of the water right acquired to Purchaser. If the transfer is not finalized, including the expiration of any appeal period, within one year of the Date of this Agreement, State shall have a right to terminate this Agreement without further obligation to complete the sale. State, at its sole discretion, may grant an extension of this time period. If the State elects to terminate this Agreement as provided herein, the deposit shall be refunded to Purchaser. Upon termination by State, Purchaser agrees to execute any and all

documents necessary to rescind the transfer and clear title to the water right in the name of State.

4.2 Use of Water. Purchaser shall be entitled to use of the water sold under this Agreement on the Closing Date.

4.3 Form of Deed. State shall convey title to the Certificate to Purchaser by quitclaim deed executed by the Governor of the State of Washington. Said deed shall be in the same form and format as Exhibit B attached hereto and incorporated by this reference herein.

4.4 Title. State does not warrant that the Certificate is in good standing nor that the Certificate is held by State. Purchaser shall be solely responsible for satisfying itself with the condition of title.

SECTION 5 NO WARRANTIES

5.1 As Is. The water right conveyed under this Agreement is sold "AS IS, WHERE IS." State does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose. No employee or agent of State is authorized to make any warranty or representation to the contrary. Further, State does not guarantee or warrant the quality or quantity of any water transferred under this Agreement or the water supply. The State shall not be liable for any water-related problems due to lack, failure, shortage, abandonment, or relinquishment of either instantaneous quantity or annual quantity, interruption or stoppage of the water right.

5.2 Release. Purchaser hereby fully releases State from any and all liability to Purchasers arising out of or related to the quality, quantity, and availability of the water covered by the Certificate prior to, at, or after Closing

SECTION 6 STATE CONTINGENCY

6.1 State. State's obligations are contingent upon the following:

- (a) confirmation of sale by the department as provided under RCW 79.01.212;
- (b) payment of all sums specified under this Agreement; and
- (c) performance on or prior to Closing of all other acts required of Purchaser under this Agreement.

6.2 Purchaser. Purchaser's obligations are contingent upon the following:

- (a) Final approval of the Certificate transfer by the Department of Ecology.

SECTION 7 CLOSING AND CLOSING COSTS

Prior to or at Closing the parties shall do the following:

7.1 State shall

- (a) issue a duly executed quitclaim deed conveying title to the Certificate within a reasonable time after confirmation of receipt of the Purchase Price by the State Treasury;
- (b) sign a Real Estate Excise Tax Affidavit, if required to record the deed;
- (b) provide any other documents necessary to consummate this agreement; and
- (c) pay prorations to the extent required and determinable.

7.2 Purchaser shall

- (a) pay into the State Treasury the Purchase Price, as set forth in Subsection 2.1 of all water approved for transfer;
- (b) sign a Real Estate Excise Tax Affidavit; if required to record the deed;
- (c) provide any other documents necessary to consummate this Agreement;
- (d) pay all administrative costs, other sums under this Agreement; and
- (e) pay the cost of recording the deed and the county processing fee for filing the Real Estate Excise Tax Affidavit.

SECTION 8 SURVIVAL

The obligations not satisfied at Closing or intended to continue beyond Closing shall not be deemed to have merged in the deed.

SECTION 9 NOTICES

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or deposit in the United States first class mail, postage prepaid, and addressed as follows:

To Purchaser:

To State:

Department of Natural Resources
Asset Management & Protection Division
Attn: Julie Armbruster
PO Box 47014
Olympia, WA 98504-7014
Facsimile: (360) 902-1789

The foregoing addresses may be changed by written notice.

SECTION 10 MISCELLANEOUS

10.1 Entire Agreement. This Agreement constitutes the entire Agreement between the parties. No prior and contemporaneous negotiations, understandings and agreements, whether oral or written, are merged in these documents and the rights and obligations of the parties shall be as set forth herein.

10.2 Binding Nature; Assignment of Rights. All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, assigns, administrators, executors and marital communities, if any, of the parties hereto. However, this Agreement shall not be assignable by Purchaser without the prior written consent and acceptance by State, which shall be at State's sole and absolute discretion.

10.3 Washington Law. This Agreement shall be construed, interpreted, and enforced pursuant to the laws of the state of Washington and venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be construed in favor of or against either party hereto.

10.4 Time of the Essence. Time is of the essence in this Agreement. No waiver or consent to any breach or other default in the performance of any of the terms of this Agreement shall be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition hereof. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.

10.5 Captions. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

10.6 Invalidity. If any provisions of this Agreement shall be invalid, void or illegal, it shall in

no way affect, impair or invalidate any of the other provisions hereof.

10.7 Counterparts. This Agreement may be signed in counterparts, any one of which shall be deemed an original.

10.8 Date of Agreement. The date of this Agreement shall be the date of the auction.

10.9 Good Faith. Both parties shall act reasonably and in good faith in order to consummate this transaction.

10.10 Authorization. Purchaser and the person(s) executing this Agreement on behalf of Purchaser represent and warrant that they are authorized to do so and that this is a legal, valid, and binding obligation on behalf of Purchaser, and is enforceable against Purchaser in accordance with its terms.

10.11 Default. In the event of default, neither party shall be liable for consequential damages.

10.12 Attorneys' Fees and Costs. If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the prevailing party shall be entitled to reasonable attorney fees, paralegal fees, accountant and other expert witness fees and all other fees, costs and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

Approved as to Form this ____ day of

_____, 20____.

Assistant Attorney General
State of Washington

INDIVIDUAL ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

CORPORATION ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____ to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

My appointment expires _____.

EXHIBIT A
HATTON WATER CERTIFICATE SALE

202487

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CERTIFICATE OF WATER RIGHT

- ☐ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- ☒ Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
July 5, 1974	G3-23389	G3-23389P	G3-23389C

NAME

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES

ADDRESS (STREET)

(CITY)

(STATE)

(ZIP CODE)

Public Lands Building

Olympia

Washington

98504

This is to certify that the herein named applicant has made proof to the satisfaction of the Department of Ecology of a right to the use of the public waters of the State of Washington as herein defined, and under and specifically subject to the provisions contained in the Permit issued by the Department of Ecology, and that said right to the use of said waters has been perfected in accordance with the laws of the State of Washington, and is hereby confirmed by the Department of Ecology and entered of record as shown, but is limited to an amount actually beneficially used.

PUBLIC WATER TO BE APPROPRIATED

SOURCE

a well

TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND

MAXIMUM GALLONS PER MINUTE

MAXIMUM ACRE-FEET PER YEAR

1500

1370

QUANTITY, TYPE OF USE, PERIOD OF USE

1500 gallons per minute, 1370 acre feet per year, from February 1 to November 30, each year,
for the irrigation of 548 acres.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL

2000 feet north and 600 feet east from the SW corner of Sec. 16

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)

SECTION

TOWNSHIP N.

RANGE, (E. OR W.) W.M.

W.R.I.A.

COUNTY

NW 1/4 SW 1/4

16

15

32 E.

36

Adams

RECORDED PLATTED PROPERTY

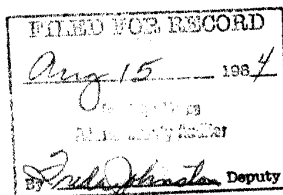
LOT

BLOCK

OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

548 acres within Sec. 16, T. 15 N., R. 32 E.W.M., Adams County, Washington.



W0639

C)

cc. SEARCH
9/26/84

PROVISIONS

The amount of water granted under this certificate is a maximum limit that shall not be exceeded, and the certificate holder shall be entitled only to that amount of water within the specified limit that is beneficially used and required for the actual crop grown on the number of acres and place of use specified in the certificate.

This authorization to make use of public waters of the state is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise.

A suitable measuring device approved by the Department of Ecology shall be maintained in accordance with WAC 508-64-020 through WAC 508-64-040.

Certificate holder shall maintain an access port as described in Ground Water Bulletin No. 1.

The final certificate of water right issues for that quantity of water that can be produced from one well only.

All water wells constructed within the state shall meet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells).

202487

ADAMS COUNTY, WASHINGTON
Dept. of Ecology
Filed by _____
Date Aug. 15, 1984, 10:15 a.m.
Book 109, Rec Instr Page 330-31
Jon Kim Yerra, Adams Co. Auditor
By _____ Deputy

Received _____
Compared _____
Direct _____
Verify _____

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, except as provided in RCW 90.03.380, 90.03.390, and 90.44.020.

This certificate of water right is specifically subject to relinquishment for nonuse of water as provided in RCW 90.14.180.

Given under my hand and the seal of this office at Spokane Washington, this 9th day of August 1984.

DONALD W. MOOS, Director
Department of Ecology

ENGINEERING DATA
OK _____

by _____
JOHN L. ARNQUIST, Regional Manager

FOR COUNTY USE ONLY

EXHIBIT B
HATTON WATER CERTIFICATE SALE

AFTER RECORDING RETURN TO:

Department of Natural Resources
Asset Management & Protection Division
PO Box 47014
Olympia, WA 98504-7014

CONVEYANCE OF WATER RIGHT

QUITCLAIM DEED

(Name) County

Grantor: State of Washington, acting by and through the Department of Natural Resources.

Grantee: **(Grantee's Name)**

Abbreviated

Legal Desc: **(put in abbreviated legal description)**

Tax Parcel #: **(put in affected tax parcel #s)**

THE GRANTOR, STATE OF WASHINGTON, acting by and through the Department of Natural Resources, for and in consideration of the sum of **(USE UPPER CASE LETTERS FOR WRITTEN AMOUNT)** Dollars (\$**(#)**), hereby conveys and quitclaims to **(Grantee's Name)** GRANTEE, the following interest in the water rights authorized under Certificate No. _____ appurtenant to the above-described real property situated in **(Name)** County, Washington, and described in Exhibit A, attached hereto, which by this reference is made a part hereof.

_[all, or spell out amount and instantaneous quantity
purchased]_____

—

This Deed is executed and delivered pursuant to RCW 79.02.270 at the request of the Commissioner of Public Lands with the approval of the Board of Natural Resources, State of Washington.

WITNESS the Seal of the State of Washington, affixed this _____ day of _____, 20____.

GOVERNOR

ATTEST: _____
SECRETARY OF STATE

Approved as to form this _____ day
of _____, 20____.

Assistant Attorney General

State Deed No. (#)
State Record of Deeds, Volume (#), Page (#).
Transaction File No. 02-(#)